

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JESSICA LEORA DEMOSS,

Appellant.

No. 39242-9-II

UNPUBLISHED OPINION

Bridgewater, P.J. — Jessica Leora Demoss appeals her bench trial conviction of unlawful possession of a controlled substance—Vicodin. We affirm.

FACTS

A law enforcement officer pulled Demoss over for driving without her headlights on. When he approached the vehicle, the officer found no one sitting in the driver’s seat and Demoss denied being the driver. Demoss eventually admitted to being the driver, and the officer arrested her for obstructing a law enforcement officer.

During a search incident to arrest, the officer found a plastic baggie containing four pills in Demoss’s left front pants pocket. The officer recognized the pills as a controlled substance and later identified the pills as Vicodin, which the crime lab confirmed. Demoss admitted that she did not have a prescription for the pills.

The State charged Demoss with unlawful possession of a controlled substance—Vicodin.¹

During trial, Connie Lafady, Demoss’s friend, testified that the pills belonged to her, and

¹ The State also charged Demoss with obstructing a law enforcement officer and third degree driving while license suspended or revoked, but those charges are not relevant to this appeal.

that she had a valid prescription for them; which evidence supported. Lafady further testified that she had been in the car with Demoss earlier that day and dropped the pills. Demoss testified that she found the pills on the floor of the car and put them in her pocket with the intent to return them to Lafady. She also testified that she had the pills in her pocket for about three hours when the officer pulled her over.

The trial court found Demoss guilty as charged.

ANALYSIS

Demoss argues that insufficient evidence supports her conviction for unlawful possession of a controlled substance—Vicodin, because the State failed to prove that she criminally possessed the drugs.

In reviewing whether evidence is sufficient to sustain a conviction, we review the evidence in the light most favorable to the State. *State v. Wentz*, 149 Wn.2d 342, 347, 68 P.3d 282 (2003). The relevant question we ask is whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *Wentz*, 149 Wn.2d at 347. An appellant claiming insufficient evidence admits the truth of the State’s evidence and all reasonable inferences that can be drawn from that evidence. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial and direct evidence are equally reliable in determining sufficiency of the evidence. *State v. Varga*, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). We defer to the fact finder on matters of conflicting testimony, persuasiveness of the evidence, and witness credibility. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

A person is guilty of possession of a controlled substance if he or she “possess[es] a

controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice.” RCW 69.50.4013. The State has the burden to prove two elements: the nature of the substance and the fact of possession. *State v. Bradshaw*, 152 Wn.2d 528, 538, 98 P.3d 1190 (2004), *cert. denied*, 544 U.S. 922 (2005). “[T]here is no intent requirement. . . . Aside from the unwitting possession defense, possession is a strict liability crime.” *State v. Vike*, 125 Wn.2d 407, 412, 885 P.2d 824 (1994). Here, the nature of the substance is hydrocodone (Vicodin), a controlled substance under RCW 69.50.206(b)(1)(x).

Demoss argues that the State failed to prove unlawful possession because she had only passing possession. She assigns error to conclusion of law 1, in which the trial court found her guilty of unlawful possession of a controlled substance—Vicodin. “Possession is defined in terms of personal custody or dominion and control.” *State v. Staley*, 123 Wn.2d 794, 798, 872 P.2d 502 (1994). The State must prove that possession is either actual or constructive. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). Actual possession means that a controlled substance is in the personal custody of the person charged with possession. *Callahan*, 77 Wn.2d at 29. “The State need not prove either knowledge or intent to possess.” *Vike*, 125 Wn.2d at 412.

Here, the trial court found that Demoss did not just casually inspect the drugs; she carried them for three hours. Carrying drugs for three hours is not passing control. *State v. Summers*, 107 Wn. App. 373, 385, 28 P.3d 780, 43 P.3d 526 (2001). The trial court also found that the police officer discovered the Vicodin in Demoss’s pants pocket. Demoss had personal custody of

the drugs when the police officer discovered them. Having personal custody of a controlled substance is actual possession. *Callahan*, 77 Wn.2d at 29. The trial court properly concluded that Demoss unlawfully possessed the controlled substance, because Demoss had actual possession of the Vicodin.

Viewing the evidence in the light most favorable to the State, the evidence is sufficient for a rational trier of fact to have found beyond a reasonable doubt that Demoss had actual, unlawful possession of a controlled substance. The findings of fact support conclusion of law 1, that Demoss is guilty of unlawful possession of a controlled substance—Vicodin.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, P.J.

We concur:

Armstrong, J.

Quinn-Brintnall, J.